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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. WILLAM "BIFF" NAYLOR, and EARLY CALIFORNIA RESTAURANTS INC., Defendants.	Case No. 2:17-cv-03484 COMPLAINT FOR PERMANENT INJUNCTION

COMPLAINT

Plaintiff, the United States of America ("United States"), on behalf of its agency the Internal Revenue Service ("IRS"), by and through its undersigned counsel, complains and alleges as follows:

PRELIMINARY STATMENT

1. The United States brings this action to enjoin William "Biff" Naylor ("Naylor") and Early California Restaurants Inc. ("Early California") (collectively "Defendants"), from continuing to incur employment taxes and otherwise violate and interfere with the administration of the internal revenue laws.

2. Specifically, the United States seeks to permanently enjoin Early California and Naylor individually, in his capacity as an officer or employee of Early California, in his capacity as an officer or employee of any business entity, and as an individual operating a nominee entity from:

a. Failing to pay over to the IRS federal taxes withheld from employee wages;

b. Failing to make timely federal employment tax deposits and payments to the IRS;

c. Assigning any property or making any disbursements until all required taxes that accrue after the injunction date are paid to the IRS;

d. Owning or operating any new or unknown company or business without notifying the IRS;

e. Failing to provide proof to the IRS of Defendants' compliance with the injunction;

f. Assigning any property or making any disbursements from Early California to or for the benefit of Naylor, or any company controlled by Naylor, until amounts required to be deposited for the employment tax liabilities of Early California have been paid to the IRS; and

g. Requiring Defendants to notify the IRS of future employment tax conduct with respect to any new or presently unknown company, including the imposition of an affirmative duty upon Defendants to notify a designated agent of the IRS of any new business Defendants come to own, manage, or work for within five years of the issuance of the injunction.

3. This action is authorized and requested by the Chief Counsel of the IRS, a delegate of the Secretary of the Treasury of the United States, and commenced at the direction of the Attorney General of the United States pursuant to 26 U.S.C. § 7401.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this civil action pursuant to 26 U.S.C. §

7402(a) and 28 U.S.C. §§ 1340 and 1345.

5. Plaintiff is informed and believes that defendant Naylor is a resident of Los Angeles County within the jurisdiction of this Court.

6. Plaintiff is informed and believes that Early California was incorporated in the state of California and has its principal place of business in Los Angeles County.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1396 because the tax liabilities accrued and continue to accrue in this district and Defendant resides in this district.

PARTIES

8. The United States of America is the plaintiff to this action and seeks to enjoin Defendants for their continual failure to pay employment taxes

9. Plaintiff is informed and believes that Defendant William "Biff" Naylor is, and at all times herein was, an individual residing in the County of Los Angeles. Naylor is made a party to this action because he is the individual against whom the United States seeks to enjoin.

10. Plaintiff is informed and believes that Defendant Early California is, and at all times herein was, incorporated in California with its principal place of business in Los Angeles County. Early California is made a party to this action because it is the corporation against whom the United States seeks to enjoin.

ALLEGATIONS

11. During the periods described below, Naylor owned and/or operated numerous companies, including Early California, which incurred substantial unpaid federal employment taxes withheld from employees. As a responsible person of certain entities, Naylor was personally assessed by the IRS with Trust Fund Recovery Penalties ("TFRP") pursuant to 26 U.S.C. § 6672 for the outstanding employment taxes owed by the entities Defendant operated and controlled.

12. Early California and the companies operated by Naylor were required by law to:

a. Withhold federal income and Federal Insurance Contributions Act ("FICA") taxes from its employees' wages, and to pay over to the IRS those withholdings, along with the employer's own FICA and Federal Unemployment Tax Act (FUTA) taxes, *see* 26 U.S.C. §§ 3102, 3111, 3301, and 3402;

b. Make periodic deposits of withheld FICA taxes, as well as its share of unemployment taxes, in an appropriate federal depository bank in accordance with the federal deposit regulations, *see* 26 U.S.C. §§ 6302, 6157; 26 C.F.R. §§ 31.6302-1, 31.6302(c)-1, 31.6302(c)-3; and

c. File, with the IRS, Employer's Quarterly Federal Tax Returns (IRS Forms 941) and annual FUTA Tax Returns (IRS Forms 940), *see* 26 U.S.C. § 6011; 26 C.F.R. § 31.6071(a)-1.

13. Early California and the companies operated by Defendant were required by law to file the returns and pay the taxes listed in paragraphs 12(a) through 12(c) above without notice or demand from the IRS. 26 U.S.C. § 6151.

14. Naylor has an extensive history of operating businesses and failing to pay employment taxes resulting in TFRPs being assessed against Naylor despite repeated efforts by the IRS to bring Naylor and his companies into compliance. Naylor consistently failed to meet his obligations to make complete federal employment tax deposits on behalf of his companies. Beginning in 1989, Naylor was assessed with the following TFRPs:

Tax Period	**TFRP Assessment**
American Restaurant Services Inc.	
9/30/1989	$55,695
12/31/1989	$55,912
3/31/1990	$39,887
6/30/1990	$40,651

Tax Period	TFRP Assessment
9/30/1990	$40,848
12/31/1990	$24,208
ARS – The Original Mel's	
6/30/1991	$16,779
9/30/1991	$15,326
12/31/1991	$10,408
3/31/1992	$11,301
Mexican Patrio Café Venture ARS	
3/31/1991	$3,624
6/30/1991	$3,644
9/30/1991	$3,036
12/31/1991	$2,392
3/31/1992	$3,124
6/30/1992	$2,603

15. Following 1992, Naylor was not assessed with TFRPs for a number of years but in 2007, Naylor began a continual pattern of failing to pay over to the IRS the employment taxes he was withholding from employees. Naylor's failure to comply with his employment tax obligations resulted in significant IRS Form 941 employment tax liabilities incurred by Naylor's companies which were thereafter assessed against Naylor personally as TFRP assessments as described in the table below:

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Tax Period	Assessment Date	Assessment Amount	Balance as of March 31, 2017
9/30/2007	11/15/2010	$105,609.00	$117,188.00
12/31/2007	11/15/2010	$90,603.00	$111,487.00
3/31/2008	11/15/2010	$93,634.00	$115,217.00
6/30/2008	11/15/2010	$59,446.00	$73,149.00
9/30/2008	11/15/2010	$87,349.00	$107,483.00
12/31/2008	11/15/2010	$92,506.00	$113,829.00
3/31/2009	11/15/2010 11/22/2010	$97,416.00 $28,820.00	$119,861.00
6/30/2009	11/15/2010 11/22/2010	$57,859.00 $84,279.00	$174,822.00
9/30/2009	11/15/2010 11/22/2010	$40,716.00 $119,346.00	$194,999.00
12/31/2009	11/22/2010	$110,761.00	$136,188.00
3/31/2010	11/22/2010	$121,485.00	$149,373.00
9/30/2010	6/17/2013 7/8/2013	$41,555.00 $104,837.00	$118,479.00
12/31/2010	6/17/2013 7/8/2013	$37,339.00 $99,784.00	$117,754.00
3/31/2011	6/17/2013 7/8/2013	$10,919.00 $21,798.00	$36,977.00

Tax Period	Assessment Date	Assessment Amount	Balance as of March 31, 2017
6/30/2011	6/17/2013 7/8/2013	$2,957.00 $36,315.00	$44,367.00
9/30/2011	6/17/2013 11/23/2015	$10,354.00 $40,773.00	$54,602.00
3/31/2012	7/8/2013	$48,494.00	$54,778.00
12/31/2012	11/23/2015	$9,729.00	$10,270.00
6/30/2013	11/23/2015	$52,088.00	$54,786.00
12/31/2013	11/23/2015	$88,165.00	$92,731.00
12/31/2014	11/21/2016	$23,404.00	$23,776.00
3/31/2015	11/21/2016	$51,772.00	$52,514.00
6/30/2015	11/21/2016	$27,495.00	$27,889.00
		Total	$2,102,519

16. The TFRP assessments described in paragraph 15 were made against Naylor because he was a responsible officer of DP Restaurant Holdings, Inc., a California corporation, Du-par's Resorts, Inc., a Nevada corporation, and FOB Du-par's Inc., a Nevada corporation, which were all corporations operating various restaurants doing business as Du-par's Restaurants.

17. On or about April 2, 2015, at the Du-Par's Restaurants Studio City location, Naylor spoke in person with IRS Revenue Officer Alex Bautista who was investigating the collectability of the outstanding employment taxes owed by DP Restaurant Holdings, Inc. ("DP Holdings"), which, at various times, operated at least four Du-par's Restaurants located in Studio City, San Diego, Los Angeles, and Pasadena. Revenue Officer Bautista

was also investigating the collectability of the TFRPs assessed against Naylor.

18. At the April 2, 2015, meeting, Revenue Officer Bautista informed Naylor that the IRS intended to refer to the Department of Justice an injunctive relief case against Naylor and related corporations.

19. According to publicly available California Secretary of State records, on or about June 8, 2015, Early California registered with the California Secretary of State.

20. On July 7, 2015, a "Statement of Information" was filed with the California Secretary of State on behalf of Early California Restaurants Inc. ("Early California") designating Veronica Gomez ("Gomez") as Chief Executive Officer, Secretary, Chief Financial Officer, and the sole Director.

21. On or about July 16, 2015, Revenue Officer Bautista made a field call to the Studio City restaurant and again informed Naylor that the IRS intended to refer a case to the Department of Justice to enjoin Defendants from continuing to accrue employment taxes. During that visit, Naylor completed an IRS Form 4180 in which Naylor admitted he was responsible for the finances of DP Holdings, responsible for payroll, and that he knew DP Holdings' was not paying its withholdings taxes to the IRS. Naylor also stated to Revenue Officer Bautista that Naylor was contemplating getting out of the business.

22. On or about August 3, 2015, Naylor called Revenue Officer Bautista and informed him that DP Holdings had ceased business on June 30, 2015, and Early California was operating four Du-par's Restaurants previously operated by DP Holdings.

23. On or about September 24, 2015, Revenue Officer Bautista visited Naylor at the Du-par's Restaurants located in Studio City and asked Naylor why Naylor was present at the restaurant. Naylor responded that he was in the process of clearing his office.

24. Revenue Officer Bautista also asked Naylor to provide proof that ownership of the four Du-par's Restaurants had been transferred to Early California. Gomez, who was the President of Early California at that time, provided Early California's Articles of Incorporation, the W-9 request for an employer identification number, and a list of assets

that had been transferred to Early California.

25. Naylor and Gomez stated that four Du-par's Restaurants were included in the transfer of ownership from DP Holdings to Early California and Early California retained all of the employees.

26. Naylor explained to Revenue Officer Bautista that Early California had acquired the restaurants for $85,000 and those funds were used to pay final payroll. Revenue Officer Bautista requested proof of payment but no such payment was thereafter provided.

27. On or about March 15, 2016, a "Statement of Information" was filed with the California Secretary of State on behalf of Early California designating Daniel C. Avila ("Avila") as Chief Executive Officer, Secretary, Chief Financial Officer, and the sole Director in place of Gomez.

28. On or about November 29, 2016, Early California filed a voluntary petition under Chapter 11 of the Bankruptcy Code. *See In re Early California Restaurants, Incorporated*, Bankr. Case No. 1:16-bk-13386-MB (Bankr. C.D. Cal.). Avila signed the petition as "President/CEO."

29. According to the petition, Early California had already accumulated $732,394 in unpaid employment taxes despite having only been in operation for approximately one year.

30. On December 27, 2016, Early California filed a status report in the bankruptcy proceeding stating that is was operating Du-par's Restaurants located at 6333 West 3rd Street, Los Angeles; 214 South Lake Avenue, Pasadena; 12036 Ventura Boulevard, Studio City; and 440 J Street, San Diego.

31. The San Diego location has since been closed.

32. On or about February 15, 2017, Avila testified under oath on behalf of Early California at the 11 U.S.C. § 341(a) meeting of creditors. Avila testified that Early California did not pay for the restaurants it acquired from DP Holdings.

33. Avila further testified that Naylor was a consultant to Early California but

Avila was responsible for the financial decisions of Early California and relied on advice from his "team."

34. On February 21, 2017, Revenue Officer Bautista interviewed an Early California employee who stated that both Naylor and Avila were responsible for the financial obligations of Early California, including payroll obligations. The employee stated he/she repeatedly reminded Naylor and Avila of the unpaid taxes and the potential consequences.

35. On March 27, 2017, a stipulation, signed by Avila as CEO of Early California, was entered in the bankruptcy wherein Avila agreed Early California's "current management is not sufficiently familiar with the financial affairs of [Early California] to act as a fiduciary in this case." Howard M. Ehrenberg ("Trustee Ehrenberg") was thereafter appointed as Chapter 11 Trustee on April 4, 2017.

36. On or about April 6, 2017, Revenue Officer Bautista interviewed an Early California employee who stated that both Naylor and Avila were responsible for the financial obligations of Early California, including payroll obligations, and that "[a]ll decisions regarding payments were designated by [Avila] and/or Biff Naylor."

37. On or about April 7, 2017, Naylor went to the Studio City restaurant and asked an employee to give him $200 cash from the employee's cash drawer. On information and belief, the employee did not provide the cash.

38. Less than two weeks after being appointed trustee, on April 12, 2017, Trustee Ehrenberg filed a motion to dismiss Early California's bankruptcy because of continuing diminution of the estate, gross mismanagement of the estate, and failure to maintain proper insurance.

39. The motion was granted and Early California's bankruptcy was dismissed on April 14, 2017.

40. As a responsible person of Early California, Naylor continues to cause Early California to accumulate employment taxes and Naylor is now attempting to impede the IRS's efforts to collect against Naylor and Early California.

41. The IRS has expended significant efforts in attempting to have Naylor and the companies he operates to comply with their employment tax obligations.

42. The IRS issued notices of levies to attach to bank accounts controlled by Naylor and his previous corporation DP Holdings. The IRS did not obtain proceeds for the issuance of these levies.

43. The IRS also issued a notice of levy attaching to Naylor's social security annuity. The IRS receives 15% of the monthly annuity.

44. In spite of IRS efforts to collect past debts, Naylor and Early California continue to incur additional employment taxes. Naylor's actions in the recent past have become even more egregious as he is now attempting to conceal his involvement with Du-par's Restaurants from the IRS through his nominee corporation Early California.

COUNT I

Injunction Under 26 U.S.C. § 7402(a)

(against Naylor and Early California)

45. The United States incorporates by reference the allegations contained in paragraphs 1 through 44 above.

46. 26 U.S.C. § 7402(a) authorizes this Court to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available.

47. Defendants have substantially interfered with, and continue to substantially interfere with, the internal revenue laws by (a) continually failing to pay employment tax obligations required by 26 U.S.C. §§ 3102, 3111, 3301 and 3402, and (b) failing to make employment tax deposits as required by 26 U.S.C. §§ 6302 and 6157 and 26 C.F.R. §§ 31.6302-1, 316302(c)-1 and 31.6302(c)-3. An injunction is appropriate and necessary to prevent continued violations.

48. Absent court intervention, the United States lacks an adequate legal remedy to prevent additional pyramiding of employment taxes owed by Defendants. Despite receiving notices, instructions, admonitions and warnings, Defendants have failed to

comply with federal law by not paying current and delinquent employment taxes and TFRP assessments. The United States has suffered, and will continue to suffer irreparable harm as a result of Defendants' violation of federal statutes, including but not limited to: (a) the loss of tax revenue, including the loss of the employee FICA taxes for which the employees already have received credit; (b) the drain on limited IRS resources due to the extensive required oversight of Defendants; and (c) the harm to the internal revenue system as a whole when competitors see Defendants' continued non-compliance with the federal laws they adhere to.

49. The harm suffered by the United States as a result of continued pyramiding outweighs the harm suffered by Defendants of being forced to comply with the law by timely paying employment tax obligations.

50. An injunction in this case would serve the public good. As the efficacy of the federal income tax and Social Security system rely on employers to collect and remit income and FICA taxes paid by its employees, the pyramiding undermines the most vital cog in our system of tax collection. Additionally, by using the money that should be deposited to the IRS for business expenses, the Defendants exact an involuntary subsidy on the taxpayers of the United States. An injunction would bring an end to this waste of taxpayer resources.

51. Defendants' obstruction and interference with the internal revenue laws not only sends a poor message to a public comprised of compliant taxpayers, but provides Defendants with a competitive advantage over business competitors who comply with internal revenue laws and pay federal employment taxes that Defendants eschew.

52. In the absence of an injunction backed by the Court's contempt powers, Defendants are likely to continue to obstruct and interfere with the enforcement of the internal revenue laws by pyramiding taxes to the detriment of the United States.

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COUNT II

Determine that Early California is a Nominee Entity for the Benefit of Naylor (against Naylor and Early California)

53. The United States incorporates by reference its allegations made in paragraphs 1 through 52 above as if fully restated herein.

54. When the Du-par's Restaurants were transferred to Early California, Naylor retained, and intended to retain, beneficial ownership of the restaurants through Early California.

55. Early California paid no consideration for the acquisition of Du-par's Restaurants. Although Naylor alleged Early California paid $85,000 for the restaurants, Naylor never provided proof of such payment and Early California's sole shareholder and president, Avila, stated at the 341(a) meeting of creditors that Early California paid no compensation to obtain the Du-par's Restaurants.

56. Early California became the nominee owner of the Du-Par's Restaurants in anticipation of litigation. Early California was incorporated approximately two months after Revenue Officer Bautista informed Naylor about the referral to the Department of Justice for an injunction against Naylor.

57. There remains a close relationship between Naylor and Early California. Although Naylor denies he continues to operate the restaurants nominally owned by Early California, two employees have stated Naylor continues to make financial decisions on behalf of Early California.

WHEREFORE, the plaintiff, United States of America, respectfully requests the Court:

A. Find that Defendants have engaged, and continue to engage, in conduct that interferes with the enforcement of the internal revenue laws;

B. Find that injunctive relief under 26 U.S.C. § 7402(a) and the Court's inherent equitable powers, is appropriate to stop the conduct described herein by Defendants.

C. Enter a permanent injunction pursuant to 26 U.S.C. § 7402:

1. Prohibiting Defendants, individually and doing business under any other name or using any other entity, and their representatives, agents, servants, employees, attorneys, successors in interest and assigns, and anyone in active concert or participation with them, from failing to withhold and pay over to the IRS all employment taxes, including federal income and FICA taxes, required by law;

2. Requiring Defendants to segregate and hold separate and apart from all other funds all monies withheld from employees or collected from others for taxes under any internal revenue law of the United States and to deposit the monies so withheld and collected, as well as the employer's share of FICA taxes, in an appropriate federal depository bank in accordance with the federal deposit regulations;

3. Requiring Defendants, and any other individuals at a business controlled by Defendants, who are responsible for carrying out the duties established under paragraphs C(1) and C(2) above, for a period of five years from the date of an order, to deliver Electronic Federal Tax Payment System receipts to IRS Revenue Officer Alex Bautista, 751 Daily Drive, Camarillo, California 93010, or to such other specific location or person as the IRS may deem appropriate, no later than the twentieth day of each month, to show that the requisite withheld FICA tax deposits were timely made;

4. Requiring Defendants to timely file all Form 941 employment tax returns to the assigned IRS Revenue Officer Alex Bautista, 751 Daily Drive, Camarillo, California 93010, or to such other specific location or person as the IRS may deem appropriate;

5. Requiring Defendants to timely pay all required outstanding liabilities due on each return required to be filed herein;

6. Prohibiting Early California from assigning any property or making any disbursements to or for the benefit of Naylor, after the date of the injunction until amounts required to be deposited for the employment tax liabilities of Earl California have been paid in full to the IRS; and

7. Requiring Defendants to notify the IRS of future employment tax conduct with respect to any new or presently unknown company, including the imposition of an affirmative duty upon Defendants to notify Revenue Officer Alex Bautista, or such other person as directed by the IRS, in the future of any new company, including resuming any previous company that is now dormant, either may come to own, manage, or work for in the next five years.

D. Require Defendants to deliver to all current employees a copy of the Court's findings and permanent injunction;

E. Require Defendants to post and keep posted for five years in one or more conspicuous place, on each business premises, where notices to employees are customarily posted, a copy of this Court's findings and permanent injunction;

F. Enter a judgment that Early California is a nominee entity for the benefit of Naylor;

G. Retain jurisdiction over this case to ensure compliance with this injunction, including authorizing the United States the ability to take post-judgment discovery to ensure compliance; and

H. Grant any further relief this Court deems just and appropriate.

Respectfully Submitted,

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Dated: May 9, 2017

/s/
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